IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1257 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JAYAGAURI JIVANLAL KESHAVLAL PANCHOLI - Appellant(s)
Versus
PRABHAKAR RAMKRISHNA BARVE - Defendant(s)

==========

Appearance :
MR HB SHAH for Appellant(s) : 1,
MR BH BRAHMBHATT for Defendant(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/08/2006

ORAL JUDGMENT

By way of this appeal, the appellant original plaintiff (hereinafter referred to as “the plaintiff”) has challenged the judgment and decree passed by the learned City Civil Court at

Ahmedabad dated 28-3-1984 in Civil Suit No.935 of 1978 in dismissing the said suit.

2. The plaintiff filed the aforesaid civil suit in the learned City Civil Court at Ahmedabad for a decree for the possession of the suit premises consisting of a room on the top floor of the property on the ground that the defendant had trespassed into it and for mesne profits at the rate of Rs.50/- per month. It was averred in the plaint that the plaintiff was the owner of property bearing survey No.3857 and M.C. No.272/2. It was further averred in the plaint that the adjoining property of survey No.3856 bearing census No.272/1 was of the ownership of one Jivanlal Keshavlal, husband of the plaintiff and the defendant was let the said property of said Jivanlal at monthly rent of Rs.150/- plus taxes to be borne by the defendant. It was further contended that the property bearing survey No.3857 and M.C. No.272/2 and sub number was purchased by the plaintiff on 22-2-1970 and at that time one Deviben was a tenant on its ground floor while the first and the second floors were vacant. It was further contended that the plaintiff came to know that the defendant had unauthorizedly entered in the top floor of the said property and therefore, the notice was given to the defendant dated 27-7-1977 to which the defendant gave an evasive and wrong reply contending that the suit premises were also let out to him by Jivanlal and therefore, the aforesaid suit came to be filed. The suit

was resisted by the defendant by filing written statement at Exh-16. It was contended that the suit was barred by estoppel and waiver and that the same was filed in collusion with her husband Jivanlal. It was further contended that the plaintiff's husband had let out the said premises to the defendant acting as a landlord on behalf of the plaintiff. It was further contended that Jivanlal had let out not only the property bearing survey No.3856 but also the suit premises to the defendant holding himself out as a landlord even of the suit premises. It was contended that the defendant has been continuously using the suit premises along with the other premises which were let out to him for running the school to the knowledge of the plaintiff and her husband. The learned trial Court raised the issue at Exh-35. The plaintiff's husband Jivanlal was examined at Exh-68. One Biharilal Ratilal was examined at Exh-95, Lalitkumar Mithalal, a clerk from the Small Causes Court who has produced the standard rent application and the order passed thereon was examined at Exh-99. One Kanaiyalal Kayasth was examined at Exh-102 and Court Commissioner Nimeshkumar Kapadia was examined at Exh-104 to prove the report and the map. The defendant was examined at Exh-111. On the side of the defendant, one Nilaben Yadav was examined at Exh-144, Rajnikant Jadav was examined at Exh-145, Gitaben Kantilal Dave was examined at Exh-149 and Kishanchandra Kundraj Rohra was examined at Exh-152. The documentary evidence consisting of copy of the notice dated 29-7-

1977, copy of the sale deed dated 12-2-1970, an extract from the City Survey Records in respect of survey No.3857, municipal tax bill etc. and other documents were produced on record.

3. After appreciation of oral as well as documentary evidence, the learned trial Court dismissed the suit by holding that the plaintiff has failed to prove that the defendant had trespassed on the suit property. Being aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court in dismissing the Civil Suit No.935 of 1978, the appellant herein original plaintiff has filed the present appeal.

4. It has come on record that the plaintiff's husband Jivanlal was managing even the property bearing survey No.3857 on her behalf. Even, witness Kishanchandra Rohra in his deposition at Exh-152 stated that Jivanlal used to collect rent from him for the portion which was let out to Deviben which was the ground floor of the property bearing survey No.3857 and even the receipts were also given to him by Jivanlal. He has also stated that on the death of Deviben, the possession of the portion which was in her occupation was handed over to Jivanlal which clearly shows that even before the plaintiff purchased the property bearing survey No.3857 and when Radhalaxmi was the owner, Jivanlal was dealing with the tenants of that property and was collecting rent and issuing

receipts. Even Jivanlal has also in terms admitted that he was collecting the rent from the tenants of Radhalaxmi and used to give them rent receipts. It appears that having realized the mistake, he has tried to improve his version, however, considering the deposition of Kishanchandra Rohra, the learned trial Court has rightly held that his subsequent version is false. It also appears from the record that so far as the dispute with regard to trespass, it was contended on behalf of Jivanlal that he and the defendant have a common friend namely Sureshbhai Jani and soon after the trespass, he and the defendant had gone to Sureshbhai for ironing out the dispute and Sureshbhai had advised the defendant to hand over the possession of the suit premises. However, it is required to be noted that said Sureshbhai has not been examined, who is the most material witness. Considering the evidence on behalf of the plaintiff and the defendant, the learned trial Court has rightly held that the defendant has not trespassed upon the property in question. No illegality has been committed by the learned trial Court in holding that the plaintiff has failed to prove that defendant has trespassed on the property in question. On considering the entire evidence on record , this Court is in complete agreement with the reasoning and finding given by the learned trial Court while dismissing the suit. The plaintiff has failed to establish and prove that the defendant has trespassed on the property in question. Accordingly, the suit filed by the plaintiff is rightly

dismissed.

5. For the reasons as stated above, the appeal fails and the same is dismissed. No costs. Ad interim relief if any granted earlier stands vacated forthwith.

(M.R.SHAH,J.)

shekhar/-